



U.S. Department of Justice

Civil Division
Federal Programs Branch

Mailing Address
P.O. Box 883
Washington, D.C. 20530

Overnight Delivery Address
20 Massachusetts Ave., N.W.
Washington, D.C. 20530

Joseph E. Borson
Trial Attorney

Tel: (202) 514-1944
Fax: (202) 616-8460
Joseph.Borson@usdoj.gov

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John A. Freedman
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., NW
Washington, D.C. 20001

Re: *Lawyers' Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity, et al.*, No. 17-cv-1354 (CKK)

Dear Counsel:

We appreciated the opportunity to discuss Defendants' September 29, 2017, filing with you during our meet-and-confer call on October 6, 2017. You raised three issues during that call, which we address in turn.

First, you identified specific entries where Defendants had provided a categorical identification of materials, and where you take the position that a document-by-document identification is required. These include: (1) entries that you have characterized as related to data analysis (Nos. 756, 769, 771, 794, 795, 799, 805); (2) entries that you have characterized as related to Commission meetings (Nos. 759, 764, 770, 796, 796, 798); and (3) entries that you have characterized as related to the Commission's scope, all of which involve internal staff discussion (Nos. 761, 774, 775, 780, 781, 787). In addition, you identified an entry related to internal discussion about potential Commission members (No. 758) and an entry on text messages regarding administrative topics such as scheduling (No. 508). (We clarified during our conversation that the last entry refers to text messages reported by Vice Chair Kobach.)

As we have stated earlier, including in our September 25, 2017, joint status report, ECF No. 32, we believe that the individual listing of each of these documents is neither practical nor required. These documents, with the exception of Vice Chair Kobach's administrative text messages, consist of staff materials that were not shared with the Commission members. As stated in Mr. Kossack's third declaration, such staff materials are not subject to disclosure under section 10(b). *See* Third Kossack Decl. ¶ 3 (citing Disclosure of Advisory Committee Deliberative Materials, 12 U.S. Op. Off. Legal Counsel 73, 75-76 (1988); *Nat'l Anti-Hunger Coal. v. Exec. Comm. of President's Private Sector Survey on Cost Control*, 557 F. Supp. 524, 529 (D.D.C. 1983)) (ECF No. 33-1). Internal communications neither shared with nor prepared for the Commission by definition do not fall within section 10(b), and we have provided more

than enough detail to allow the Court to determine for itself whether or not these specific materials are subject to section 10(b). With respect to Vice Chair Kobach's text messages, as indicated on the index, Vice-Chair Kobach described these texts as non-substantive communications dealing with scheduling, and therefore per our earlier agreement not subject to individual disclosure. *Cf.* Sept. 25, 2017 Joint Status Report, at I.A., ECF No. 32 (the parties agree that administrative emails need not be individually disclosed).

Second, you have identified two entries which you state are too vague to allow for a proper assessment of whether section 10(b) applies (Nos. 544 and 703). We hereby provide the following additional explanation:

- Entry 544: Email exchange between Commissioner McCormick, a DOJ official, and a non-government third-party discussing alleged discrepancies in Chicago's vote totals for the November 2016 election, with attached spreadsheet identifying the number of ballots cast in each precinct.
- Entry 703: Brief email from DHS official responding to staff request for status update on an earlier conversation, and stating that the official continues to explore possible coordination between DHS and the commission.

Finally, you asked us about emails and text messages exchanged between Commission members that you contend were not reflected in the index. As Mr. Kossack stated in his fourth declaration, he explicitly asked each Commission member to search for "emails and other written communications" -- including text messages -- that members "sent or received to or from" other Commission members. Fourth Kossack Decl., Ex. A, ECF No. 33-2. Each of the Commission members who received these instructions "executed the certification attesting to having completed the search and collection of documents as requested." *Id.* ¶ 9. Accordingly, there is no reason to believe that the index is not complete, and that all messages from or to Commission members were received and logged.

All my best,

/s/ Joseph E. Borson